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April 30, 2009

**VIA HAND DELIVERY**

The Honorable Anne K. Quinlan  
Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423-0001

Re: Docket No. 42110, Seminole Electric  
Cooperative, Inc. v. CSX Transportation, Inc.

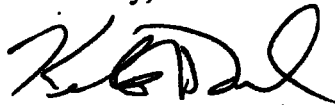
Dear Secretary Quinlan:

Enclosed for filing in the referenced proceeding please find Complainant's  
Unopposed Petition to Revise Procedural Schedule.

Please provide electronic receipt of this filing.

Thank you for your attention to this matter.

Sincerely,



Kelvin J. Dowd  
An Attorney for Seminole Electric  
Cooperative, Inc.

KJD:lad  
Enclosures

cc: G. Paul Moates, Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

<b>SEMINOLE ELECTRIC COOPERATIVE, INC.</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 42110</b>
	)	
<b>CSX TRANSPORTATION, INC.</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**COMPLAINANT SEMINOLE ELECTRIC COOPERATIVE, INC.'S  
UNOPPOSED PETITION TO REVISE PROCEDURAL SCHEDULE**

Pursuant to 49 C.F.R. Parts 1104.7(b) and 1115.5(a), Complainant  
Seminole Electric Cooperative, Inc. ("SECI") respectfully requests that the Board modify  
the current procedural schedule with respect to the filing of evidence and briefs in this  
proceeding, as follows:

<u>Filing</u>	<u>Current Due Date</u>	<u>Proposed Due Date</u>
Complainant's opening evidence	June 1, 2009	July 31, 2009
Defendant's reply evidence	August 31, 2009	November 18, 2009
Complainant's rebuttal evidence	October 15, 2009	January 8, 2010
Closing briefs	November 4, 2009	January 28, 2010

The proposed revised schedule is the product of an agreement between SECI and  
Defendant, CSX Transportation, Inc. ("CSXT"), and SECI has been authorized to  
represent that CSXT concurs in the relief requested herein.

The current procedural schedule for this case, as jointly proposed by the parties, was adopted by the Board in a Decision served December 11, 2009 (“December 11 Decision”). When they proposed the current schedule, the parties believed that they had provided sufficient time for discovery and the development and presentation of SECI’s opening evidence and for CSXT’s reply evidence under the Constrained Market Pricing methodology. However, as shown below, the discovery process has proven to be more complex than the parties anticipated, and SECI has not been able to complete the iterative process needed to finalize essential building blocks for the calculation of stand-alone costs (SAC) relevant to the rail movements at issue. Accordingly, good cause exists to extend the due date for opening evidence, which is just over one month away, and modify the remainder of the procedural schedule accordingly.

The proposed revised schedule provides adequate time for SECI to assemble and present its opening evidence, and for CSXT to assemble and present its reply evidence, and extends the due dates for rebuttal evidence and closing briefs to maintain the current intervals between the due dates for these pleadings, with allowances for the Thanksgiving, Christmas and New Year holidays.

### **GOOD CAUSE EXISTS TO ADOPT THE MODIFIED SCHEDULE**

The December 11 Decision noted that the original schedule jointly requested by the parties was longer than the default schedule for SAC cases set out in 49 CFR Part 1111.8(a), but adopted that schedule in recognition that “SAC cases have become far more complex and consuming since 1996” when the default procedural

schedule was promulgated. *Id.* at 2. The parties to SAC cases in which evidence has been presented under the new rules adopted in *Major Issues In Rail Rate Cases*, STB Ex Parte No. 657 (Sub-No. 1) (STB served Oct. 30, 2006), have learned that this is particularly true with respect to the development of revenue divisions for cross-over traffic under the new ATC procedure, which requires an analysis of revenues and variable costs for each potential movement that is considered for inclusion in the SARR traffic group. The ATC analysis must be completed before the traffic group can be finalized, and the traffic group must be finalized before the peak-period train volumes – which are a necessary input for the simulation of the SARR’s operations using the Board-approved Rail Traffic Controller Model – can be determined. It is only at that point that the complainant can complete the system design and operating plan for the SARR, which in turn are necessary predicates for the development of SARR operating expenses and road property investment costs.

The complexity of assembling the SARR/SAC building blocks is heightened in this case because the SARR will replicate portions of the existing CSXT system in several states, from origins in Indiana, Kentucky, Pennsylvania, and West Virginia to Florida, and likely will handle flows of non-coal traffic in addition to the issue and other coal traffic. Accordingly, SECI sought traffic, revenue and train/car movement records from CSXT in discovery covering a variety of commodities (including intermodal traffic) moving in 13 states plus the District of Columbia. CSXT has been responsive and cooperative throughout the process, as evidenced by the fact that only one motion to compel discovery, focused on only one category of data, has been filed in this

complex case. Nevertheless, the task of producing and then assembling the documents and data in a format that is compatible with the Board's protocols has been time-consuming, and has led to a substantial number of follow-up questions and exchanges between the parties. The process has been complicated further by the understandable fact that CSXT's traffic data and other business records are not maintained in a form specifically designed for STB rate litigation.

SECI sent its last follow-up request to CSXT on April 24, 2009. When CSXT responds, SECI will be in a position to complete development of the SARR traffic group (including analysis of cross-over traffic using the ATC procedure) and assemble the peak volume/train list. It then can proceed with development of its opening evidence regarding the SARR system, operating plan, operating expenses and road property investment costs. The time required for these tasks requires an extension of the due date for opening evidence from June 1 to July 31, 2009. This is the minimum extension SECI believes is necessary in order to develop a complete, well-documented presentation of its opening evidence, and that CSXT believes is necessary for its reply evidence, consistent with the Board's procedural rules and mandates.

The proposed new due dates for SECI's rebuttal evidence and final briefs were set to maintain approximately the same time intervals after the filing of opening evidence as those set forth in the December 11 Decision. However, since the period between the proposed new due date for CSXT's reply evidence and SECI's rebuttal evidence would encompass the 2009 Thanksgiving and Christmas holidays, SECI is

proposing modest additional time for the submission of rebuttal evidence that avoids these as well as the New Year holiday.

**CONCLUSION**

For the foregoing reasons, good cause exists to modify the evidentiary and briefing due dates as requested herein. Accordingly, the Board should grant SECI's Petition.

Respectfully submitted,

SEMINOLE ELECTRIC  
COOPERATIVE, INC.

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Dated: April 30, 2009

Its Attorneys

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of April, 2009, I caused copies of the foregoing Motion to be served by hand-delivery on counsel for Defendant CSX Transportation, Inc., as follows:

G. Paul Moates, Esq.  
Paul A. Hemmersbaugh, Esq.  
Matthew J. Warren, Esq.  
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Kelvin J. Dowd